

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re J.R., a Person Coming Under the
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

ALDO R.,

Defendant and Appellant.

D070639

(Super. Ct. No. CJ1308C)

APPEAL from orders of the Superior Court of San Diego County, Laura J.

Birkmeyer, Judge. Affirmed.

Julie E. Braden, under appointment by the Court of Appeal, for Defendant and Appellant.

Thomas E. Montgomery, County Counsel, John E. Philips, Chief Deputy County Counsel, and Dana Shoffner, Deputy County Counsel, for Plaintiff and Respondent.

Aldo R. appeals from the juvenile court's jurisdictional and dispositional orders declaring his two-year-old daughter, J.R., to be a dependent, and removing custody

pursuant to Welfare and Institutions Code¹ section 300, subdivision (j) and section 361, subdivision (c) based on alleged excess discipline or physical abuse of a sibling. Aldo contends substantial evidence does not support the juvenile court's jurisdictional findings and that the court erred in removing J.R. from his physical custody. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Aldo and Mother married in 2013. At that time, Mother had two sons from a prior relationship, D.R. and C.R. (the half-siblings), who are currently aged, respectively, seven and eight. In January 2015, the half-siblings reported that Aldo had physically disciplined them, with C.R. stating that Aldo had used a belt and a hanger. C.R. also stated that Aldo and Mother engaged in domestic violence. Mother denied the allegations and Aldo refused an interview. In February 2016, the half-siblings again reported physical discipline, but denied the use of any object. Neither child had marks or bruises and the parents were uncooperative.

In April 2016, the Agency received a referral from the half-sibling's elementary school regarding alleged physical abuse of D.R. D.R. disclosed that Aldo had hit him on the back with a belt and had slapped C.R. on the face. D.R. had a red mark on his back and C.R. had a faint blue mark on his face, which school staff photographed. C.R. seemed concerned about getting Aldo in trouble.

The next day, police arrested Aldo at the school on an outstanding warrant for driving under the influence. Aldo had an active restraining order forbidding him from

¹ Undesignated statutory references are to the Welfare and Institutions Code.

possessing any firearms and requiring him to stay away from his sister and her children. The responding officer found bruising across the middle of D.R.'s back. C.R. had bruising on his left cheek and a few scratches. The half-siblings were disinterested in telling the officer how they sustained their injuries, but eventually claimed they had received them from falling off their scooters and jumping rope.

A social worker interviewed the half-siblings, the parents and school staff. D.R. claimed ongoing physical discipline from Aldo, and physical violence between Aldo and Mother. D.R. reported that Aldo had hit him on the back because he took " 'too long to tie his shoe.' " After D.R. disclosed the incident to school staff, C.R. told Aldo, causing Aldo to hit D.R. on the head. Aldo had previously shown D.R. a gun and reportedly told D.R. that he would kill anyone who talked to him. D.R. also claimed that Aldo hits J.R. in the stomach when she is not quiet.

C.R. denied any domestic violence between his parents or any physical discipline by Aldo. C.R. claimed that D.R. lied and denied ever seeing a gun at his home. Mother similarly denied D.R.'s claims, stated that D.R. " 'makes up stories' " and that the boys received their injuries by accidental means. Aldo denied owning a gun or the existence of an active restraining order. He denied domestic violence with Mother or ever physically disciplining the children. School staff members reported several incidents and complaints in which Aldo became aggressive with other parents at school pick-up. According to staff, Aldo intended to sue the school for allowing the children to be interviewed and forbade the school from interviewing them in the future.

The Agency took the three children into protective custody. A physical examination of the children revealed no injuries on D.R., a scratch on J.R., and an injury to C.R. consistent with C.R.'s claim that he had fallen down. When shown photographs of D.R.'s prior back injury, the doctor concluded that the injury had been inflicted by a looped object. The Agency detained J.R. in a licensed foster home and granted the parents separate supervised visits. At the contested jurisdiction and disposition hearing, the juvenile court sustained the petition, declared J.R. a dependent, removed custody from the parents, and placed her in licensed foster care. It ordered services be provided to both parents and set a review hearing in six months. Aldo timely appealed.

DISCUSSION

I. *Standard of Review*

A parent may seek review of both the jurisdictional and dispositional findings on an appeal from the disposition order. (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 249.) When the sufficiency of the evidence to support a finding or order is challenged on appeal, the reviewing court must determine if there is any substantial evidence, that is, evidence which is reasonable, credible, and of solid value to support the conclusion of the trier of fact. (*In re Jason L.* (1990) 222 Cal.App.3d 1206, 1214.) In making this determination, all conflicts are to be resolved in favor of the prevailing party and issues of fact and credibility are questions for the trier of fact. (*In re Steve W.* (1990) 217 Cal.App.3d 10, 16.)

"However, substantial evidence is not synonymous with *any* evidence. [Citations.] A decision supported by a mere scintilla of evidence need not be affirmed on appeal.

[Citation.] Furthermore, '[w]hile substantial evidence may consist of inferences, such inferences must be "a product of logic and reason" and "must rest on the evidence" [citation]; *inferences that are the result of mere speculation or conjecture cannot support a finding* [citations].'

[Citation.] 'The ultimate test is whether it is reasonable for a trier of fact to make the ruling in question in light of the whole record.' " (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393-1394.)

II. Analysis

A. Jurisdictional Finding

A minor may come within the jurisdiction of the court if the minor's "sibling has been abused . . . and there is substantial risk that the child will be abused." (§ 300, subd. (j).) In making this determination, the juvenile court must consider "the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child." (*Ibid.*) The provision " 'accords the trial court greater latitude to exercise jurisdiction as to a child whose sibling has been found to have been abused than the court would have in the absence of that circumstance.' " (*In re I.J.* (2013) 56 Cal.4th 766, 774.) " 'Facts supporting allegations that a child is one described by section 300 are cumulative.' [Citation.] Thus, the court 'must consider all the circumstances affecting the child, wherever they occur.' " (*In re T.V.* (2013) 217 Cal.App.4th 126, 133.)

The first prong of the analysis examines whether the evidence supported the juvenile court's finding that one of J.R.'s siblings had been abused. D.R. told school staff that Aldo had hit him on the back with a belt and had slapped C.R. on the face. School staff photographed a red mark on D.R.'s back and a faint blue mark on C.R.'s face. Although the physician that examined D.R. a few days later did not observe any injuries on him, she viewed the photographs of D.R.'s prior back injury and opined that the injury had been inflicted by a looped object. D.R. told a social worker that when C.R. informed

Aldo about D.R.'s statements to school staff, Aldo hit D.R. on the head with his knuckle. D.R. claimed this incident led to physical violence between Aldo and Mother. D.R. told the social worker that he was afraid to go home because Aldo would know he had been interviewed. D.R. claimed ongoing physical discipline from Aldo, and physical violence between Aldo and Mother.

C.R. denied any domestic violence between his parents or any physical discipline by Aldo, and told the social worker that D.R. lied. In January 2015, however, C.R. reported that Aldo had physically disciplined him and D.R. with a belt and hanger. C.R. also stated that Aldo and Mother engaged in domestic violence. In February 2016, the half-siblings again reported physical discipline by Aldo. The juvenile court could have reasonably concluded that C.R. changed his claims to protect Aldo because school staff had reported that C.R. seemed concerned about getting Aldo in trouble.

Citing *Gonzalez v. Santa Clara County Dept. of Social Services* (2014) 223 Cal.App.4th 72 (*Gonzalez*), Aldo contends that, even assuming the truth of D.R.'s statements, the Agency's involvement results from a disagreement on how he disciplines his children. Aldo, however, never argued to the juvenile court that D.R.'s back injury resulted from reasonable physical discipline. Rather, Aldo initially claimed that he never physically disciplined the children or struck them with a belt. He later told a social worker that he had slapped D.R.'s butt once or twice, but denied hitting D.R. in the back. When confronted with the photograph of D.R.'s back injury, Aldo stated that D.R. suffered the injury falling off a bicycle. Mother claimed, however, that a jump rope caused the injury to D.R.'s back. Notably, the juvenile court found D.R. to be "clear and

consistent" and that no credible evidence supported the alternative explanations offered by the parents.

Moreover, *Gonzalez* is distinguishable. The issue in *Gonzalez* was whether a report was properly submitted to the Child Abuse Central Index under the Child Abuse and Neglect Reporting Act (CANRA) based on evidence that a Mother spanked her 12-year-old daughter with a wooden spoon with enough force to produce visible bruises. (*Gonzalez, supra*, 223 Cal.App.4th at p. 75.) The *Gonzalez* court held that "a genuine disciplinary intention can furnish a bar to a finding of child abuse under CANRA when the circumstances present a reasonable occasion for discipline and the discipline imposed is reasonable in kind and measure." (*Id.* at p. 91.) *Gonzalez* did not mention section 300 and Aldo fails to explain how this case applies to a dependency proceeding. Even if the *Gonzalez* analysis applies, Aldo's attempt to analogize to *Gonzalez* fails because it involved spanking, not hitting a child's back with a belt.

While not overwhelming, the circumstances and totality of the evidence is sufficient to support the juvenile court's implied finding that one of J.R.'s siblings had been abused. The second prong of the analysis examines whether a substantial risk exists that J.R. will be abused. Aldo asserts that the facts, at best, left a perception of risk. We disagree.

Before the incident that resulted in the removal of the children, C.R. and D.R. both claimed that Aldo physically disciplined them, with C.R. stating that Aldo used a belt and hanger. Although C.R. later denied any physical discipline, D.R. claimed that Aldo used

a belt on his back and knuckles on his head. D.R. also revealed that Aldo would hit J.R. in the stomach when she was not quiet.

"A parent's past conduct is a good predictor of future behavior." (*In re T.V.*, *supra*, 217 Cal.App.4th at p. 133.) J.R. was too young to verbalize any abuse and, should she be physically disciplined, the risk of injury is increased due to her young age. The focus of the proceeding is on averting harm to the child. (*Ibid.*) Here, the juvenile court judged the credibility of the witnesses and impliedly found that Aldo's behavior raised a substantial risk that J.R. would be abused. Again, considering the totality of the circumstances, the evidence supported this conclusion. It is not our role to reweigh the evidence.

B. Dispositional Finding

Assuming the juvenile court's jurisdictional finding is upheld, Aldo contends: (1) the evidence did not support removing J.R. from his custody because clear and convincing evidence did not exist showing that placing J.R. at home with her parents presented substantial danger to her; and (2) the Agency failed to undertake reasonable efforts to prevent J.R.'s removal. Aldo argues that the dispositional order should be reversed and the matter remanded for a new hearing in conformity with the statutes and Rules of Court. We are not persuaded.

To support an order removing a child from parental custody, the court must find clear and convincing evidence "[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical

health can be protected without removing the minor from the parent's . . . physical custody. . . ." (§ 361, subd. (c)(1).) The court must also determine "whether reasonable efforts were made to prevent or eliminate the need for removal of the minor" and "state the facts on which the decision to remove the minor is based." (§ 361, subd. (d).) "The juvenile court has broad discretion to determine what would best serve and protect the child's interest and to fashion a dispositional order in accordance with this discretion." (*In re Jose M.* (1988) 206 Cal.App.3d 1098, 1103-1104.) Although "the [juvenile] court makes findings by the elevated standard of clear and convincing evidence, the substantial evidence test remains the standard of review on appeal." (*In re Cole C.* (2009) 174 Cal.App.4th 900, 916.)

The juvenile court was presented with evidence that Aldo and Mother denied any physical discipline beyond a slap on the butt. The parents also gave inconsistent stories on how D.R. had sustained his back injury. When asked by the social worker what led to the removal of his children, Aldo stated " 'I don't know.' " Additionally, while Aldo claimed to have enrolled in a parenting class, he did not know the name of his parenting class facilitator and declined to sign the release of information allowing the social worker to contact his service providers. Although the social worker provided Aldo a referral for a child abuse offenders group, Aldo was still in the process of obtaining such services. When read in its entirety, the information in the jurisdiction/disposition report regarding Aldo's current attitude supports the juvenile court's implied conclusion that anything short of removing J.R. from her parents would be ineffective.

Aldo next argues that the Agency failed to undertake reasonable efforts to prevent J.R.'s removal, contending the matter should be remanded for a new dispositional hearing because the juvenile court made no inquiry as to the basis for the social worker's conclusion that reasonable efforts had been made to prevent removal and that no reasonable means could eliminate the need for removal. Aldo never raised this issue with the juvenile court, he did not object to the Agency's jurisdiction/disposition report, or otherwise suggest that any reasonable alternatives to removal were available. (*In re Urayna L.* (1999) 75 Cal.App.4th 883, 886 [failure to raise adequacy of the report below waives the issue].) Moreover, Aldo does not identify, let alone explore, any of the supposedly reasonable alternatives in his appellate briefing; thus, his argument fails for insufficient explication. (Cf. *In re Sade C.* (1996) 13 Cal.4th 952, 994.)

In any event, the juvenile court could reasonably infer from the above evidence, particularly Aldo's professed ignorance as to why his children were removed, that J.R. could not have safely remained in the parents' custody. (Compare, *In re Ashly F.* (2014) 225 Cal.App.4th 803, 810 [finding "[a]mple evidence" of reasonable means to protect the children in the home where the Mother expressed remorse for the injuries she inflicted on her child and was enrolled in a parenting class].) Even if there were arguably any deficiency in the removal order, it was harmless error because, on this record, it is not reasonably probable additional findings, if made, would have been in favor of continued parental custody. (*In re Cristian I.* (2014) 224 Cal.App.4th 1088, 1098-1099 [reversal is justified only when it is reasonably probable result more favorable to appealing party would have been reached in absence of the error].)

DISPOSITION

The juvenile court's jurisdictional and dispositional orders are affirmed.

McCONNELL, P. J.

WE CONCUR:

NARES, J.

HALLER, J.